

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Raymond L. Hicks,

Civil No. 10-2930 (DWF/AJB)

Plaintiff,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION
AND MEMORANDUM**

Michael J. Astrue,
Commissioner of Social Security,

Defendant.

James H. Greeman, Esq., Greeman Toomey, counsel for Plaintiff.

Lonnie F. Bryan, Assistant United States Attorney, United States Attorney's Office,
counsel for Defendant.

This matter is before the Court upon Plaintiff Raymond L. Hick's ("Plaintiff") objections to Chief Magistrate Judge Arthur J. Boylan's May 27, 2011 Report and Recommendation insofar as it recommends that: (1) Plaintiff's Motion for Summary Judgment be denied; (2) Defendant's Motion for Summary Judgment be granted; and (3) judgment be entered accordingly. Defendant Michael J. Astrue ("Defendant") filed a response to the Report and Recommendation on June 6, 2011 (Doc. No. [15]). Plaintiff filed an objection on June 9, 2011 (Doc. No. [16]), and Defendant responded to Plaintiff's objection on June 20, 2011 (Doc. No. [17]).

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of counsel, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Plaintiff's objections.

Based upon the *de novo* review of the record and all of the arguments and submissions of the parties and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Plaintiff Raymond L. Hicks's objections (Doc. No. [16]) to Chief Magistrate Judge Arthur J. Boylan's May 27, 2011 Report and Recommendation are **DENIED**.

2. Chief Magistrate Judge Arthur J. Boylan's May 27, 2011 Report and Recommendation (Doc. No. [14]), is **ADOPTED**.

3. Plaintiff's Motion for Summary Judgment (Doc. No. [6]) is **DENIED**.

4. Defendant's Motion for Summary Judgment (Doc. No. [9]) is **GRANTED**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: July 28, 2011

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge

MEMORANDUM

The Court concludes, as Chief Magistrate Judge Arthur J. Boylan did in his May 27, 2011 Report and Recommendation, that the Administrative Law Judge's ("ALJ") determination that Plaintiff remained able to work in the national economy after 2005 was based upon substantial evidence. Based upon the Court's *de novo* review of the record in this matter, the Court also concludes that the ALJ was justified in relying upon the report from Examiner Dr. Westreich. After examining the Plaintiff, Dr. Westreich was of the opinion that Plaintiff had recovered from his accident-related injuries in 1999. Consequently, Dr. Westreich did not place any restrictions on the Plaintiff, either at home or at work, and released him for work without restriction.

It is true that the Plaintiff has asserted from day one that his headaches, which began in 1999, continued to worsen through 2005. However, the Court concludes, as the ALJ and Chief Magistrate Judge Boylan did, that that assertion, while perhaps made in good faith, is not supported by the medical evidence.

The Court acknowledges that while the record establishes that the Plaintiff's ongoing headaches began after an accident in 1999 and continued to worsen, it does not establish that the headaches became so severe that the Plaintiff became totally disabled in September 2005. The Court therefore concludes that substantial evidence supports the ALJ's determination that the Plaintiff remained able to perform work in the national economy after September 2005.

For these reasons, the Court has adopted Chief Magistrate Judge Boylan's May 27, 2011 Report and Recommendation.

D.W.F.